

SUPREME COURT PRACTICES AND PROCEDURES

INTERNAL OPERATING PRACTICES AND PROCEDURES OF THE CALIFORNIA SUPREME COURT

(Revised December 13, 2000)

The following internal operating practices and procedures are observed by the California Supreme Court in the performance of its duties.

I. Acting Chief Justice

An Acting Chief Justice performs the functions of the Chief Justice when the Chief Justice is absent or unable to participate in a matter. The Chief Justice, pursuant to constitutional authority (Cal. Const., art. VI § 6), selects on a rotational basis an associate justice to serve as Acting Chief Justice.

II. TRANSFER OF CASES

A. All transfers to the Supreme Court of a cause in a Court of Appeal pursuant to article VI, section 12 of the California Constitution are accomplished by order of the Chief Justice made on a vote of four justices assenting thereto.

B. Unless otherwise ordered by the Chief Justice, all applications for writs of mandate and/or prohibition that have not previously been filed with the proper Court of Appeal are transferred to such court.

C. The Supreme Court exercises exclusive jurisdiction over all matters relating to review of Public Utility Commission cases (Cal. Rules of Court, rule 58) and State Bar proceedings (*id.*, rule 952 et seq.).

III. CONFERENCES

A. Unless otherwise directed by the Chief Justice, regular conferences are held each Wednesday, excluding the Wednesday of regular calendar sessions and the first Wednesday of July and August.

B. Special conferences may be called by the Chief Justice whenever deemed necessary or desirable.

C. Four justices constitute a quorum for any regular or special conference.

D. A judge assigned by the Chief Justice to assist the court, or to act in the place of a regular member of the court who is disqualified or otherwise unable to act, may be counted to obtain

a quorum for a conference. A regular member of the court, present at a conference, who is not participating in a particular matter is not counted in determining a quorum for that matter.

E. A justice who has ascertained that he or she will not be present at a conference or will not be participating in a particular matter will notify the Chief Justice or the Calendar Coordinator, as specified by sections XI(C) and XII(A). The absent justice may leave his or her votes on any given conference matter, and may be counted to constitute a quorum for each such conference matter.

IV. CONFERENCE MEMORANDA

A. Unless otherwise directed by the Chief Justice, a conference memorandum is prepared for each petition requiring conference consideration or action.

B. Upon the filing of a petition, motion, or application, the Calendar Coordinator, under the direction of the Chief Justice, assigns it a conference date and refers it to one of the central staffs or a member of the court for preparation of a conference memorandum as follows:

1. Petitions in or derived from criminal cases, to the criminal central staff.
2. Applications for writs of habeas corpus arising out of criminal proceedings, to the criminal central staff.
3. Petitions for review of State Bar proceedings pursuant to rule 952 et seq. of the California Rules of Court and applications to the Supreme Court pursuant to article V, section 8 of the California Constitution for a recommendation regarding the granting of a pardon or commutation to a person twice convicted of a felony, to the criminal central staff.
4. Petitions in civil cases, to the civil central staff.
5. All other petitions and applications, including overflow petitions that cannot be handled by the existing central staffs, to the six associate justices and the Chief Justice in rotation so that, at the end of a given period of time, each justice will have been assigned an equal number of petitions. Petitions for rehearing after decision in the Supreme Court are referred to a justice, other than the author, who concurred in the majority opinion.

C. The recommendation set forth in a conference memorandum will generally be one of the following: (1) "Grant," (2) "Grant and Hold," (3) "Grant and Transfer," (4) "Deny," (5) "Submitted," (6) "Denial Submitted," and (7) "Deny and Depublish." The designation "submitted" is used when the author believes the case warrants special discussion. The designation "denial submitted" is used when the author believes the petition should be denied, but nevertheless believes some ground exists that could arguably justify a grant, or an issue is raised that otherwise warrants discussion by the court. The designation "deny and depublish" is used when the author does not believe the decision warrants review, but nevertheless believes the opinion is potentially misleading and should not be relied on as precedent.

D. The author of the conference memorandum assigns it to either the "A" or the "B" list. Cases assigned to the "A" list include all those in which the recommendation is to grant or take

affirmative action of some kind, e.g., “grant and transfer” or “deny and depublish,” or in which the author believes denial is appropriate, but that the case poses questions that deserve special attention. Cases assigned to the “B” list concern routine matters, or application of settled law.

E. Conference memoranda are delivered by the author to the Calendar Coordinator for reproduction and distribution to the justices no later than the Tuesday of the week before the conference, thus providing ample time for the justices and their staffs to review the petition and the court’s internal memoranda.

F. The court’s calendar coordinator divides the weekly conference agenda into an “A” and “B” list, based on the designation appearing on each conference memorandum.

G. Matters appearing on the “A” list are called and considered at the conference for which they are scheduled. Before or after a vote is taken, any justice may request that a case be put over to a subsequent conference within the jurisdictional time limit for further study, preparation of a supplemental memorandum, or both. The time within which action thereon must be taken will be extended pursuant to rules 24 and 28 of the California Rules of Court, if necessary.

H. Matters appearing on the “B” list will be denied in accordance with the recommendation of the memorandum, at the conference at which they are scheduled, unless a justice requests that a case be put over to a subsequent conference within the jurisdictional time limit for further study, preparation of a supplemental memorandum, or both.

I. In any case in which the petition, application, or motion is denied, a justice may request that his or her vote be recorded in the court minutes.

J. When a justice is unavailable or disqualified to participate in a vote on a petition for review or other matter and four justices cannot agree on a disposition, the Chief Justice, pursuant to constitutional authority (Cal. Const., art. VI, § 6), assigns on a rotational basis a Court of Appeal justice as a pro tempore justice to participate in the vote on the petition or matter. The assigned justice is furnished all pertinent petitions, motions, applications, answers, memoranda, and other material.

K. Either at the time review is granted, or at any time thereafter, the court may specify which of the issues presented should be briefed and argued.

V. CALENDAR SESSIONS FOR ORAL ARGUMENT

Unless otherwise ordered by the court, regular sessions of the court are held each year, on a day or days as determined by the Chief Justice, as follows: at San Francisco during the months of January, ~~April~~ March, ~~June~~ May, and ~~November~~ September; at Sacramento during the months of February and ~~October~~ November; and at Los Angeles during the months of ~~March~~ April, ~~May~~ June, ~~September~~ October, and December. No regular session is held during July and August.
[Section amended effective Dec. 13, 2000.]

Unless otherwise ordered by the Chief Justice, the court convenes at 9:00 a.m. Special sessions are held by order of the Chief Justice or by order on a vote of four justices assenting thereto.

Unless otherwise ordered, only one counsel may be heard for each side. Counsel wishing to divide the time for oral argument must request permission from the Court not later than ten days after the case has been set for oral argument. In no event shall oral argument be divided into segments of less than ten minutes, except that one counsel for the opening side (unless additional counsel are so authorized) may reserve a portion of his or her allotted time for rebuttal.

VI. CALENDARS AND CALENDAR MEMORANDA

A. The purpose of the calendar memorandum is to present the facts and legal issues, and to propose a resolution of the legal issues.

B. At the request of the justice preparing a calendar memorandum, or on direction of the Chief Justice, or on the affirmative vote of a majority of the court, the Clerk's Office will request counsel for the parties to be prepared to argue and to submit additional briefs on any points that are deemed omitted or inadequately covered by the briefs or in which the court is particularly interested.

C. In assigning cases for the preparation of calendar memoranda, the Chief Justice takes into account the following considerations, but may depart from these considerations for the purpose of equalizing the workload of the justices or expediting the work of the court:

1. The case is assigned to one of the justices who voted for review. If a case involves substantially the same issues as one already assigned for preparation of a calendar memorandum, it may be assigned to the justice who has the similar case. Preference in case assignments may be given to a justice who authored the conference memorandum or supplemental conference memorandum on which the petition was granted, unless other factors, such as equalization of workload, suggest a different assignment.

2. Granted petitions in other matters and State Bar proceedings originally referred to the central staffs are generally assigned to the justices in such a manner as to equalize each justice's allotment of cases.

3. Appeals in cases in which the death penalty has been imposed are assigned in rotation as they are filed.

4. When a rehearing has been granted and a supplemental calendar memorandum is needed, the matter will ordinarily be assigned to the justice who prepared the prior opinion if it appears that he or she can present the views of the majority. Otherwise, the case will be assigned to a justice who is able to do so.

D. The court's general procedures for circulation of calendar memoranda, etc., are as follows:

1. The justice to whom a case is assigned prepares and circulates a calendar memorandum within a prescribed time after the filing of the last brief. When the calendar memorandum circulates, the Calendar Coordinator distributes copies of the briefs to each justice. The record remains with the Calendar Coordinator, to be borrowed as needed by a justice or his or her staff.

2. Within a prescribed time after the calendar memorandum circulates, each justice states his or her preliminary response to the calendar memorandum (i.e., that he or she concurs, concurs with reservations, is doubtful, or does not concur). Each justice also indicates whether he or she intends to write a separate concurring or dissenting calendar memorandum in the case. If it appears from the preliminary responses that a majority of the justices concur in the original calendar memorandum, the Chief Justice places the case on a pre-argument conference (§ VI(D)4, *post*). If it appears from the preliminary responses that a majority of the justices will probably not concur in the original calendar memorandum or a modified version of that memorandum, the Chief Justice places the matter on a conference for discussion or reassigns the case.

3. Each justice who wishes to write a concurring or dissenting calendar memorandum does so and circulates that memorandum within a prescribed time after the original calendar memorandum circulates. Soon after any concurring or dissenting calendar memorandum circulates, each justice either confirms his or her agreement with the original calendar memorandum or indicates his or her agreement with the concurring or dissenting calendar memorandum. If the original calendar memorandum thereby loses its tentative majority, the Chief Justice places the matter on a conference for discussion or reassigns the case.

4. The Chief Justice convenes a pre-argument conference at least once each month. The purpose of the conference is to identify those cases that appear ready for oral argument. The Chief Justice constructs the calendars from those cases.

The Chief Justice places on the agenda of the conference any case in which all concurring or dissenting calendar memoranda have circulated and the “majority” calendar memorandum has been approved by at least four justices or is likely to be approved by four justices at the conference. The Chief Justice also includes on the agenda any case in which discussion could facilitate resolution of the issues.

VII. SUBMISSION

A. A cause is submitted when the court has heard oral argument or has approved a waiver of argument and the time has passed for filing all briefs and papers, including any supplementary brief permitted by the court.

B. Submission may be vacated only by an order of the Chief Justice stating in detail the reasons therefor. The order shall provide for prompt resubmission of the cause.

VIII. ASSIGNMENTS FOR PREPARATION OF OPINIONS

A. After argument the Chief Justice convenes a conference to determine whether the calendar memorandum continues to represent the views of a majority of the justices. In light of that discussion, the Chief Justice assigns the case for opinion.

B. The Chief Justice assigns the cases for preparation of opinions in the following manner:

1. If a majority of the justices agree with the disposition suggested in the calendar memorandum, ordinarily the case is assigned to the author of that memorandum.

2. If a majority of the justices disagree with the disposition reached in the memorandum, the case is reassigned to one of the majority.

3. When a case is argued on rehearing, it ordinarily remains with the justice who prepared the prior opinion or the supplemental calendar memorandum if it appears that he or she can express the majority view. If he or she does not agree with the majority view, the case is reassigned to a justice who is a member of the majority.

4. In making assignments pursuant to these guidelines, the Chief Justice takes several considerations into account, including the following: (a) the fair distribution of work among the members of the court; (b) the likelihood that a justice can express the view of the majority of the court in a particular case; (c) the amount of work he or she has done on that case or on the issues involved; and (d) the status of the unfilled cases theretofore assigned to him or her.

C. Every reasonable effort is made by the justices to agree on the substance of opinions, and whenever possible, dissents or special concurrence on minor matters are avoided. When a justice discovers that he or she objects to something in a proposed opinion, he or she will call it to the author's attention. In addition, the objecting justice may prepare and circulate a memorandum setting forth his or her concerns and suggestions for the purpose of giving the author an opportunity to conform to any proposed changes and to remove or meet the objections raised. These practices and filing policies (see § X, *post*) reflect the court's strong preference for assuring that each opinion author be allowed sufficient time to consider the views of every justice before the opinion is released for filing.

D. Unless otherwise ordered by the Chief Justice, all opinions in State Bar and Commission on Judicial Performance cases and all memorandum opinions are issued "By the Court." All other opinions identify the author and the concurring justices unless the author desires to have the opinion appear "By the Court" and a majority of the court agree.

E. The rules of the *California Style Manual* are consulted in the preparation of opinions as well as conferences and calendar memoranda.

IX. CIRCULATION OF OPINIONS

Within a prescribed time after submission, the justice to whom the case is assigned circulates the proposed majority opinion. Within a prescribed time after the proposed majority opinion circulates, all concurring or dissenting opinions circulate. If the author of the proposed majority opinion wishes to respond by change or by memorandum to any concurring or dissenting opinion, he or she does so promptly after that opinion circulates. The author of the concurring or dissenting opinion thereafter has a prescribed time in which to respond.

All opinions are cite-checked and proofread before circulating. Only copies of an opinion circulate; the original remains in the Calendar Coordination Office, where any justice may sign it.

X. FILING OF OPINIONS

Opinions are completed in time for reproduction and filing on a normal opinion-filing day. Unless good cause to vacate submission appears, the opinions are filed on or before the 90th day after submission. Internal circulation of an opinion after the 80th day following submission may result in the inability of the author of the proposed majority or of another timely circulated opinion to afford the views contained in the late circulated opinion full consideration and response. Such late circulated opinions will not be filed until at least 10 days but in no event more than 20 days after the filing of the majority opinion. At any time before the majority or lead opinion is final, the court may modify or grant rehearing pursuant to the applicable rules of court.

XI. REVIEW OF DETERMINATIONS BY THE COMMISSION ON JUDICIAL PERFORMANCE

A petition for review of a determination by the Commission on Judicial Performance to retire, remove, censure, admonish, or disqualify a judge or former judge under subdivision (d) of section 18 of article VI of the California Constitution must address both the appropriateness of review and the merits of the commission's determination. The commission may file a response, and the petitioner a reply, within prescribed times. The petition is assigned by the Calendar Coordinator, under the direction of the Chief Justice, to the civil central staff. When briefing is complete, the staff prepares a conference memorandum in which the recommendation generally will be either to "Deny" or "Retain for Further Consideration." If a majority of the justices vote to "deny," the petition is denied, and an order to that effect is filed forthwith. If a majority vote to "retain for further consideration," the Chief Justice assigns the case to a justice who voted to retain. This justice then prepares a memorandum on the merits, which will serve as a calendar memorandum if an order granting review subsequently is filed. The court's usual procedures for circulation of calendar memoranda then are followed. Once all concurring and dissenting memoranda have circulated, and it appears there is a majority for a particular disposition, the matter is considered at a conference. If a majority vote to deny review, an order to that effect is filed forthwith. If a majority vote to grant review, an order to that effect is filed, and the case is simultaneously set for oral argument at the soonest possible time under the court's usual scheduling rules. Because of the time limitations in subdivision (d) of section 18 of article VI of the California Constitution, continuance of oral argument rarely will be granted. Following oral argument and submission of the cause, the court's usual rules for preparation and circulation of opinions apply.

XII. ABSENCE OF JUSTICES

A. If an opinion bears the signatures of four justices, it may be filed as provided above in section X, even though one or more of the signers are absent from the state and regardless of whether the absentee justice is the author of the opinion.

B. When a justice votes to issue a writ or order to show cause, or to grant review or rehearing, and then leaves the state prior to the making of the order, the case may be assigned to him or her if, under these procedures, it would normally be so assigned if he or she were present.

C. As soon as a justice knows that he or she will not be attending a conference of the court, he or she will notify the Chief Justice. Any justice may leave his or her votes on any given conference matter.

XIII. DISQUALIFICATION OF JUSTICES AND ASSIGNMENT OF RETIRED JUSTICES

A. As soon as a justice discovers that he or she is disqualified in any case or, although not technically disqualified, deems it advisable not to participate, he or she will notify the Calendar Coordinator.

B. When it is known after a case is granted but before argument that a justice for any reason is unable to participate in a matter, the Chief Justice pursuant to constitutional authority (Cal. Const., art. VI, § 6) assigns on a rotational basis a Court of Appeal justice to assist the court in place of the nonparticipating justice.

C. If an assigned justice has participated in the decision of a case before this court, that justice will also participate in any further proceedings including requests for modification, petitions for rehearing, and rehearings until such time as the decision has become final. This procedure is to be followed unless the original assignment was necessitated by the absence of a regular justice of this court, in which event a regular justice, if able to do so, will participate in lieu of the assigned justice in the consideration of any petition for rehearing and, if rehearing is granted, in any subsequent proceeding.

D. If a justice retires before a case in which he or she has heard oral argument is final, he or she may be assigned to continue to participate in the case. When a permanent replacement justice appointed to fill the vacancy created by the retirement of that justice has taken the oath of office, and the opinion has been filed, any petition for rehearing will be acted on by the permanent replacement justice.

XIV. APPLICATIONS FOR RECOMMENDATIONS FOR EXECUTIVE CLEMENCY, HABEAS CORPUS, AND STAYS

A. An application for a recommendation for executive clemency comes before this court pursuant to article V, section 8, subdivision (a) of the California Constitution and Penal Code section 4851. When such applications are received by the Clerk's Office, they are given a file number, and the fact that they have been filed is a matter of public record. The papers and documents transmitted to the court by the Governor with the application often contain material that the Governor may have the right to withhold from the public. (See Gov. Code, § 6254, subs. (c), (f), & (l); Civ. Code, § 1798.40, subd. (c).) Accordingly, the court treats these files as confidential and does not make them available to the public.

Applications are denied unless four or more justices vote to recommend that clemency be granted. The Chief Justice informs the Governor by letter of the court's recommendation, and a copy of such letter is included in the court's file and considered a matter of public record. Pursuant to the provisions of Penal Code section 4852, the Clerk transmits the record to the office of the Governor if the court's recommendation is favorable to the applicant. Otherwise, the documents remain in the files of the court. (See Pen. Code, § 4852.)

B. When a defendant in a criminal case files a petition for review after denial without opinion by the Court of Appeal of a petition for prohibition or mandate attacking a Penal Code section 995 or section 1538.5 ruling, the matter will be placed on the agenda of a regular conference and will not be accelerated. Absent extraordinary circumstances, no order staying the trial will issue. If the case goes to trial and the matter becomes moot before the regular conference, the memorandum need only so state, and the petition may then be denied as moot without the necessity of considering its merits.

When the Court of Appeal has denied such a writ petition with opinion, a request to stay the trial pending action by the Supreme Court on the petition for review will be granted when necessary to prevent the matter from becoming moot.

C. When a misdemeanor conviction has become final on appeal or a final contempt order has been filed by a trial court and the defendant or contemner files a petition for review following denial of a timely habeas corpus or certiorari petition by a Court of Appeal or files a timely original petition, a stay of execution of the judgment or order will issue pending determination of the petition. The Chief Justice may condition the stay on the filing of a bond or on the continuation of an appeal bond, if any, if he or she deems it appropriate to do so. If the petition appears to lack merit, however, expedited consideration will be given to deny the petition in preference to releasing an incarcerated petitioner.

D. Pending disposition of a petition for writ of habeas corpus to review an order permitting extradition, the Chief Justice may stay extradition on behalf of the court. If the petition appears to lack merit, however, expedited consideration will be given to deny the petition in preference to staying the extradition proceedings.

E. In cases not covered by subdivisions (B) and (C) of this section, and when not precluded by subdivision (G) of this section, the Chief Justice may, in his or her discretion, grant applications for stays of judicial proceedings or orders pending regular conference consideration of the matters involved.

F. Except as provided in subdivisions (B) through (E) of this section and except in emergencies, petitions for habeas corpus, applications for stays of judicial proceedings or orders, and applications for stays of execution are to be resolved at the weekly case conference.

G. Stays governed by special provisions of statutes or rules of court will be issued only in compliance with such provisions. (See, e.g., Pub. Util. Code, §§ 1761-1766; Cal. Rules of Court, rule 49.)

H. Applications to stay actions by public agencies or private parties pending consideration of petitions for writs of mandate (i.e., *Emeryville*-type stays [see *People v. Emeryville* (1968) 69 Cal.2d 533]) are to be resolved at the weekly case conference.

I. Upon receipt of a proper notice of bankruptcy relating to a pending petition for review in a creditor's action or an action that would diminish the relevant estate, the court will file an order noting the stay of proceedings and suspending the operation of the applicable rule 28 time period. (See 11 U.S.C. § 362(a)(1).) Thereafter, the parties will be directed to file quarterly status reports to apprise the court of the current status of the bankruptcy proceedings. Upon receipt of a proper

notice terminating the bankruptcy stay, the court shall enter an order terminating the stay of proceedings and indicating that the applicable time period of rule 28, subdivision (a), shall begin running anew from the date of the order.

XV. APPOINTMENT OF ATTORNEYS IN CRIMINAL CASES

A. In criminal matters, upon a verified or certified statement of indigency, the court, acting through the Clerk's Office, will appoint an attorney for a party in the following instances:

1. In a pending case in which the petition for review has been granted;
2. In a pending automatic appeal and/or related state habeas corpus/executive clemency proceedings;
3. In an original proceeding in which an alternative writ or an order to show cause has been issued;
4. In capital cases in the following proceedings:

(a) Proceedings for appellate or other post-conviction review of state court judgments in the United States Supreme Court, subject however to the power of that court to appoint counsel therein; and

(b) Conduct of sanity hearings when indicated.

B. At or after the time the court appoints appellate counsel to represent an indigent appellant on direct appeal, the court also shall offer to appoint habeas corpus/executive clemency counsel for each indigent capital appellant. Following that offer, the court shall appoint habeas corpus/executive clemency counsel unless the court finds, after a hearing if necessary (held before a referee appointed by the court), that the appellant rejected the offer with full understanding of the legal consequences of the decision.

C. The court's Automatic Appeals Monitor is responsible for recruiting, evaluating, and recommending the appointment of counsel on behalf of indigent appellants in capital appeals and/or related state habeas corpus/executive clemency proceedings.

D. Counsel in automatic appeals and/or related state habeas corpus/executive clemency proceedings are compensated by one of two alternative methods: Under the "time and costs" method, counsel are compensated on an hourly basis and reimbursed for necessary expenses that were reasonably incurred. The court makes partial payments on counsel's fee claims while these claims are pending full review. Under the alternative optional "fixed fee and expenses" system, counsel are paid a fixed amount at regular stages of a case, according to a predetermined assessment of its difficulty.

E. Habeas corpus petitions in capital cases are governed by the timeliness and compensation standards set out in the "Supreme Court Policies Regarding Cases Arising From Judgments of Death." Habeas corpus counsel appointed in capital cases have the duty to investigate

factual and legal grounds for the filing of a petition for a writ of habeas corpus, as delineated in those policies.

XVI. COMMUNICATIONS FROM COUNSEL IN PENDING CASES

Whenever a matter is pending before the court, any communication to the court from counsel is to be addressed to the Clerk's Office, with copies to all counsel.

XVII. SUSPENSION OF PROCEDURES

Whenever exceptional or emergency conditions require speedy action, or whenever there is other good cause for special action regarding any matter, the operation of these procedures may be temporarily suspended by affirmative vote of four justices.

The Chief Justice may extend any applicable time limit (except that stated in section X) on written request by a justice stating good cause and the date by which he or she expects to comply.